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**United States Department of Energy  
Office of Hearings and Appeals**

In the Matter of Personnel Security Hearing	)	
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Filing Date:	November 6, 2017	Case No.: PSH-17-0080
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Issued: February 15, 2018

**Administrative Judge Decision**

Kimberly Jenkins-Chapman, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXXXX (hereinafter referred to as “the individual”) to hold an access authorization<sup>1</sup> under the Department of Energy’s (DOE) regulations set forth at 10 C.F.R. Part 710, Subpart A, entitled, “General Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material.” As fully discussed below, after carefully considering the record before me in light of the relevant regulations and Adjudicative Guidelines, I have determined that the individual’s access authorization should be granted.

**I. Background**

The individual is employed by a DOE contractor in a position that requires him to hold a DOE security clearance. During a background investigation, information surfaced about the individual’s failure to file federal and state income tax returns. When the Local Security Office (LSO) was unable to resolve the derogatory information during a personnel security interview (PSI), it requested and received permission to initiate an administrative review proceeding.

In September 2017, the LSO sent a letter (Notification Letter) to the individual advising him that it possessed reliable information that created a substantial doubt regarding his eligibility to hold a security clearance. In an attachment to the Notification Letter, the LSO explained that the derogatory information fell within the purview of one or more security concerns under Guideline F (Financial Considerations) of the *National Security Adjudicative Guidelines for Determining*

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<sup>1</sup> Access authorization is defined as “an administrative determination that an individual is eligible for access to classified matter or is eligible for access to, or control over, special nuclear material.” 10 C.F.R. § 710.5(a). Such authorization will be referred to variously in this Decision as access authorization or security clearance.

*Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position*, effective June 8, 2017 (Adjudicative Guidelines).

Upon receipt of the Notification Letter, the individual exercised his right under the Part 710 regulations by requesting a hearing, and I was appointed the Administrative Judge in the case. At the hearing that I convened, the individual presented his own testimony; the DOE presented no witnesses. In addition to the testimonial evidence, the LSO submitted four exhibits into the record; the individual tendered two exhibits. The exhibits will be cited in this Decision as “Ex.” followed by the appropriate numeric or alphabetic designation. The hearing transcript in the case will be cited as “Tr.” followed by the relevant page number.

## **II. Regulatory Standard**

A DOE administrative review proceeding under Part 710 is not a criminal matter, where the government has the burden of proving the defendant guilty beyond a reasonable doubt. Rather, the regulations require me, as the Administrative Judge, to issue a Decision that reflects my comprehensive, common-sense judgment, made after consideration of all the relevant evidence, favorable and unfavorable, as to whether the granting or continuation of a person’s access authorization will not endanger the common defense and security and is clearly consistent with the national interest. 10 C.F.R. § 710.7(a). The regulatory standard implies that there is a presumption against granting or restoring a security clearance. *See Department of Navy v. Egan*, 484 U.S. 518, 531 (1988) (“clearly consistent with the national interest” standard for granting security clearances indicates “that security determinations should err, if they must, on the side of denials”); *Dorfmont v. Brown*, 913 F.2d 1399, 1403 (9th Cir. 1990), cert. denied, 499 U.S. 905 (1991) (strong presumption against the issuance of a security clearance).

The individual must come forward at the hearing with evidence to convince the DOE that granting or restoring the individual’s access authorization “will not endanger the common defense and security and will be clearly consistent with the national interest.” 10 C.F.R. § 710.27(d). The individual is afforded a full opportunity to present evidence supporting his eligibility for an access authorization. The Part 710 regulations are drafted so as to permit the introduction of a very broad range of evidence at personnel security hearings. Even appropriate hearsay evidence may be admitted. 10 C.F.R. § 710.26(h). Hence, an individual is afforded the utmost latitude in the presentation of evidence to mitigate the security concerns at issue.

## **III. The Notification Letter and the Security Concerns at Issue**

As previously noted, there are various security concerns under Guideline F, Financial Considerations. To support Guideline F, the LSO alleges that the individual failed to comply with the law by not filing his 2014 and 2015 federal and state income tax returns.

I find that the individual’s failure to discharge his obligation to file his federal and state tax returns raises questions about his ability to comply with rules and regulations which, in turn, casts doubt on his reliability, trustworthiness and ability to protect classified information. *See* Guideline F, at ¶ 18.

#### IV. Findings of Fact and Analysis

During a PSI conducted on July 13, 2017, the individual admitted that he failed to file his 2014 and 2015 federal and state income taxes as required by law. Ex. 1. However, during the hearing, the DOE Counsel acknowledged, and the individual confirmed, that he did not make enough money to legally require him to file his 2014 taxes. Tr. at 18, 19; Ex. A. According to the individual, he did not file his 2015 taxes because, among other reasons, he did not have the 1099 information from an employer.<sup>2</sup> Ex. 3. He admitted that he was not very organized and needed to sort through his documents to determine what he might have been missing. *Id.* The individual stated that he was not aware that failing to file taxes is illegal. *Id.* During the hearing, when questioned about why he failed to file his 2015 taxes, the individual testified that his 2015 1099 form was stolen, and he admitted that he “dropped the ball” in not obtaining another copy and completing his filing. Tr. at 13.

With respect to his 2014 taxes, the individual reiterated that he believed that he did not make enough money to be required, by law, to file his taxes. *Id.* at 21.<sup>3</sup> As noted above, the DOE Counsel acknowledged this fact and therefore there is no need to consider this finding as a security concern, and I will not address it further as such.

The individual stated that, although not intentional, he let his duty to file his taxes slip and admitted that he should not have allowed his tax filing delinquency to persist for so long. *Id.* at 13, 14. The individual testified that he has always filed his taxes in the past and is current on all other tax years. *Id.* at 13. He offered testimonial and documentary evidence that he had filed both his 2014 and 2015 taxes as of December 7, 2017. *Id.* at 18, Exs. A, B.

The individual testified that he is more organized now, and places all of his important documents in a binder as soon as he receives them. *Id.* at 15. According to the individual, he has matured and now fully understands his legal obligation to file income tax returns, and he stated that, in the future, he will immediately meet with a tax preparer to file his taxes in a timely fashion. *Id.* at 15, 16. As of the date of the hearing, the individual is current on all of his federal and state tax filings.<sup>4</sup>

I have thoroughly considered the record of this proceeding, including the submissions tendered in this case and the testimony of the individual presented at the hearing. In resolving the question of the individual’s eligibility for access authorization, I have been guided by the applicable factors prescribed in 10 C.F.R. § 710.7(c)<sup>5</sup> and the Adjudicative Guidelines. After due deliberation, I have

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<sup>2</sup> During the hearing, the individual repeatedly referenced a missing W-2, but later clarified that he meant his 1099 form instead.

<sup>3</sup> The individual subsequently filed for 2014, but he stated that he did so only because “it was addressed in [the Notification Letter], and I said that that’s – they want me to file for 2014, so that’s what I’m going to do.” Tr. 20, 21.

<sup>4</sup> The individual explained that since his 2015 taxes were filed late, he is not sure how much he will owe the IRS; he is awaiting an IRS determination. Therefore, as of the time of the hearing, the individual had not actually paid his tax liability for that year. However, the LSO only cited the individual’s failure to file as a security concern and not his failure to pay his taxes.

<sup>5</sup> In resolving concerns under the Adjudicative Guidelines, the deciding official shall consider: The nature, extent, and seriousness of the conduct; the circumstances surrounding the conduct, to include knowledgeable participation;

determined that the individual's access authorization should be granted. I find that granting the individual's DOE security clearance will not endanger the common defense and security and is clearly consistent with the national interest. 10 C.F.R. § 710.27(a).

The Adjudicative Guidelines describe factors that could mitigate security concerns about financial considerations. *See* Guideline F at ¶ 20. In relevant part, the Guidelines provide that mitigating conditions include that "the behavior ... occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment." Guideline F at ¶ 20(a). Here, the individual acknowledged that he was negligent when he failed to file his 2015 federal and state income tax returns, and admitted that his lost 1099 form was a poor excuse for his failure to meet his tax filing obligation. He credibly maintained that he did not willfully disobey the law when he failed to file his tax returns.

In addition, the individual maintained that he lacked organizational skills and maturity. Tr. at 15. I take notice that the individual was only 23 years old at the time in question, and therefore may have lacked the maturity to understand his legal obligations and the ramifications of his actions. The individual has demonstrated to me, however, that he has now achieved a greater level of maturity, and a better understanding of his obligations. He has assumed full responsibility for his actions, and has taken steps to fully satisfy his obligations. He has also shown that he has since become more organized and has created a better system for filing and preparing his taxes, and he has committed to promptly employing a tax preparer for future years, to avoid a recurrence of the situation. I find, therefore, that the mitigating criteria of Guideline F at ¶ 20(a) applies, in that "the behavior...is unlikely to recur."

The Guidelines also provide that mitigating conditions include that "the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements." Guideline F at ¶ 20(g). In the present case, the individual presented evidence that, as of December 7, 2017, he had filed his federal and state tax returns for the tax year 2015 (as well as 2014, although not required by law), thereby fulfilling his obligation to file tax returns for that year. As noted previously, he testified credibly that he now completely understands his obligation to file federal tax returns in a timely fashion and will do so in the future. It is clear to me that the individual now comprehends the ramifications of any future failure to timely file his taxes, federal or state, and that he is unlikely to do so.

The record is clear that the individual's failure to file his federal and state tax returns stemmed from procrastination and negligence. I believe that his failure to file resulted from a lack of maturity, and not from a willful disregard of the law. For the reasons set forth herein, I find that the individual has adequately resolved the Guideline F security concerns at issue in this proceeding.

## **V. Conclusion**

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the frequency and recency of the conduct; the age and maturity of the individual at the time of the conduct; the voluntariness of participation; the absence or presence of rehabilitation or reformation and other pertinent behavioral changes; the motivation for the conduct; the potential for pressure, coercion, exploitation, or duress; the likelihood of continuation or recurrence; and other relevant and material factors.

In the above analysis, I have found that there was sufficient derogatory information in the possession of the DOE that raises serious security concerns under Guideline F. After considering all the relevant information, favorable and unfavorable, in a comprehensive common-sense manner, including weighing all the testimony and other evidence presented at the hearing, I have found that the individual has brought forth sufficient evidence to mitigate the security concerns associated with Guideline F. I therefore find that granting the individual's access authorization will not endanger the common defense and is clearly consistent with the national interest. Accordingly, I have determined that the individual's access authorization should be granted. The parties may seek review of this Decision by an Appeal Panel under the regulations set forth at 10 C.F.R. § 710.28.

Kimberly Jenkins-Chapman  
Administrative Judge  
Officer of Hearings and Appeals

Date: February 15, 2018